IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MONOTYPE IMAGING, INC., et al, Plaintiffs/Counterclaim Defendants	)	
-VS-	)	CA No. 11-11985-NMG
	)	Pages 1 - 25
DELUX CORPORATION, et al, Defendants/Counterclaim Plaintiff	)	

MOTION HEARING/SCHEDULING CONFERENCE

BEFORE THE HONORABLE NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 4
Boston, Massachusetts 02210
May 10, 2012, 11:15 a.m.

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A P P E A R A N C E S:

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P R O C E E D I N G S

THE CLERK: This is Civil Action No. 11-11985, Monotype Imaging, Inc., et al v. Deluxe Corporation. Will counsel please identify themselves for the record.

MR. PUZELLA: Good morning. Mark Puzella from Goodwin Procter on behalf of the plaintiffs.

THE COURT: Mr. Puzella, good morning.

MS. HUSTON: Good morning, your Honor. Julia Huston of Foley Hoag for the defendant, Deluxe Corporation.

THE COURT: Ms. Huston.

MS. MAERKER: Jenevieve Maerker, also of Foley Hoag for Deluxe.

THE COURT: And the last name is?

MS. MAERKER: Maerker.

THE COURT: Thank you, Ms. Maerker. Good morning, Counsel. We are here on what was originally billed as a scheduling conference, but since then a motion to dismiss the counterclaims has been filed. And counsel did express a willingness to talk about that, and I'm going to give you a short period of time to address the motion to dismiss. Before that, just so we're on the same page, let me try to describe what my understanding of the case is. This is a claim, as I understand it, by the plaintiff corporations for trademark infringement, breach of contract, and a 93A claim. The plaintiffs allege that its license that is at issue here does

not authorize the, quote, "use" of the trademarks.

The defendant has filed a counterclaim in this case, and that is what is at issue in the motion. The plaintiffs have filed a motion to dismiss their counterclaims for breach of contract and a 93A claim. The issue seems to involve a technology that has changed dramatically since the license was granted back in 1996. My little statement here is that Internet commerce has evolved -- and I guess that's an understatement -- since 1996.

The plaintiff alleges that the Internet-based sales and electronic proofs are prohibited that the defendant is conducting. The defendant says that the definition of "bitmap" is the crucial issue here and claims that it has been doing what the plaintiff objects to for decades.

Do I basically have the claims in mind, first, Mr. Puzella?

MR. PUZELLA: Yes, your Honor. I could quibble at the edges, but that's the gist of it.

THE COURT: Well, you can certainly quibble at the edges because I am a neophyte in this area and am going to need some guidance, and I do actually have two questions for counsel to address while they briefly argue the motion to dismiss the defendant's counterclaims. For the plaintiff I would say, you contend that Deluxe violates the licensing agreement in part by allowing third-party Internet users to select and use

Monotype's software programs from their own computers. How exactly are these Internet users using the font software program simply by choosing a font to apply to their business forms on the defendant's website? I am going to ask the defendants their question, and then I'll let you go for a few minutes, and then we'll go back and forth briefly here.

For the defendants, why has the defendant confined the contract dispute to a debate over the meaning of the term "bitmap"? As the Court understands plaintiff's complaint, defendant's transmissions of electronic proofs to customers is just one use of the software program allegedly in breach of the licensing agreement. So with that, Mr. Puzella, I will allow you to address briefly your motion to dismiss the defendant's counterclaims for breach of contract and under 93A.

MR. PUZELLA: Thank you, your Honor. First, to start with your question, your Honor, the question of use is important for purposes of the case, but it is not important for purposes of the motion to dismiss. The motion to dismiss is premised on whether the defendants have violated the license agreement on terms other than use. So for purposes of the motion to dismiss, we don't need to get into what we mean by use, but I'll nonetheless answer your question.

The way the system works is that the defendant has software on its systems that allow the computers located at Deluxe to render typefaces, and when typefaces are on

computers, they're called "fonts." So their business, as you said, is to create custom checks and forms and those sorts of things.

So their traditional business is: Someone puts a phone call, put down an order in a catalog, would make its way to Deluxe, and a Deluxe employee would sit at a Deluxe computer on Deluxe's premises and key in, physically key in the order into the Deluxe computers, which would access the Monotype software to create the font, and it would be printed, and then that proof, that sample, would be sent to the user. So that is Deluxe using the software.

Move to the modern era. We're on the Internet now. The customer goes to the Deluxe website, chooses the form that they would like. A page comes up with the form and a box where you can enter the text, the "United States District Court of Massachusetts," for example. There's a drop-down menu that allows the user to select the typeface or the font that they would like, Times New Roman. By selecting that, what's happening is that the user is sending an instruction, by selecting that item in the drop-down menu, the user is sending an instruction over the Internet back to Deluxe's computers. Deluxe has Internet servers that are just computers that have the font software on them that previously Deluxe computers were connected to, that their employees sat at the keyboard.

That instruction goes to Deluxe servers. The Deluxe

servers automatically access the Monotype font software, which renders the desired font, Times New Roman in our example, for the words that the user has chosen, "United States District Court of Massachusetts." The rendering is turned into what the plaintiffs characterize as a .jpg or .swf computer file. It's a picture. Those computer files are then transmitted back over the Internet to the user's Web page display, and they can see exactly what it is that they've selected, so their text in Times New Roman as transmitted back from Deluxe.

So rather than, under what the license contemplates, a Deluxe employee using the software at their location, we now have a scenario, thanks to the Internet, where they've effectively outsourced the proofing process so that the consumer sitting at their computer can send instructions to the Deluxe computers directly.

THE COURT: If they didn't have the drop-down menu and just saw the font itself without the name, would that be in violation of the license?

MR. PUZELLA: That would address the trademark issues because in the drop-down menus they use the trademark terms of the typefaces, right? So in some cases, as they do, they use "your company name here," you know, in the actual font, as opposed to the name of the font. That would address that issue. But what's happening is, they're allowing the user to access the font software, provide instructions to it, and then

receive the output of those instructions; namely, a rendered font. So that's the use issue, okay?

But as I started with, that's not an issue that the Court needs to address in the context of the motion to dismiss because, as the Court noted, there are several breach of the license agreements that are at issue here. Use is one of them. It's the first one.

If I can just step back for a moment to address the motion to dismiss. So the defendants in their counterclaim allege that Monotype has breached the agreement; in particular, I think Paragraph 8.06. Does the Court have the license handy? I have a copy if you need it.

THE COURT: I think I do have the license somewhere, but I'm not sure I can put my hands right on it. Is it attached?

MR. PUZELLA: It should be attached to the complaint, your Honor.

THE COURT: Exhibit 1, yes, I have it.

MR. PUZELLA: So if the Court would turn to 8.06, Page 5.

THE COURT: 8.06?

MR. PUZELLA: Yes. It's the signature page, your Honor, Page 5.

THE COURT: Yes.

MR. PUZELLA: So the counterclaim is based on this

sentence: "Deluxe shall be entitled during the term of this license to use the license products without disturbance, subject only to performance of its obligations hereunder."

So from Monotype's point of view, that raises two questions: One, has Monotype disturbed Deluxe in its use? If it hasn't, there's no breach of contract.

The second question: This provision seems to suggest that if Deluxe has not satisfied its obligations under the contract, that this sentence just falls away, they're not entitled to be free from disturbance. So on the factual question of whether Deluxe has been disturbed, this is a straight-down-the-middle motion to dismiss issue. There's an absence of facts on disturbance.

The only facts that defendants allege as to how it is that Monotype has disturbed it, they all relate -- and it's convoluted in their answer and counterclaims and in their opposition -- but they all relate to the mere filing of this litigation. There are no claims that Monotype has reached out to Deluxe's customers, that Monotype has turned off the software, that Monotype has done anything to disturb Deluxe's use. In fact there's no dispute, I believe, that Deluxe continues to use the software today, and it's doing so as it's done for -- well, since 1996. So there's a lack of facts on this notion that Monotype has disturbed their use.

Now, that brings us to the second point. Let's assume

that there is a disturbance. It doesn't matter if Deluxe has not otherwise performed under Paragraph 8.06. In the answer in counterclaims, Deluxe has conceded, it's our position, that they have, by providing the user with a proof or a sample in the form of a .jpg file or a .swf file, they have violated the prohibition in the agreement that prohibits their delivery of the licensed products to third parties.

Now, "licensed products" is a defined term. It's on the first page. It's Paragraph 1.01(d), and in licensed products we see that it includes bitmaps. "Bitmaps" is also a defined term. That's 1.01(a). "Bitmap means a machine-readable digital representation of a single typeface style in a fixed resolution, weight, width, format, and point size." So that's where we get to the --

THE COURT: I'm sorry. Where are you reading that one?

MR. PUZELLA: 1.01(a). It's just four above "licensed products."

THE COURT: Oh, okay, I've got it, yes.

MR. PUZELLA: So the question then, is the conceded file that goes to the user -- there's no dispute there -- is it a bitmap? Monotype contends that it is. The plain language would suggest that it is. It is machine readable because what is it? It is a computer file that's created by the font software. They don't dispute that. It's a .jpg or it's an

.swf file. That computer file is sent from Deluxe over the Internet to the user's computer. By definition, because it's sent over the Internet, it is in machine-readable form. The user's computer reads it and displays it on the screen, so it's in machine-readable form.

It is a digital representation because it is digital for the very same reasons that it's machine readable. It's not physical. It's not printed on the page as their proofs used to be that went through the mail. It's digital. It's a representation of a single typeface style because what is it? It is a picture of what the consumer selected, "United States District Court" in Times New Roman. So it's a single typeface style, Times New Roman, and because it's a picture, it's fixed. Resolution, weight, width, format, and point size, that list of things are merely characteristics of typefaces and fonts.

I don't want to go into how fonts work, but you can imagine just from using Word that there are different sizes of fonts. You can have 10-point, you can have 12-point. Lawyers I would imagine from time to time try to play with fonts to get pages, and the Court has probably experienced that. All this means is, it's in a specific weight, width, format, and so forth. It is because it's a single image of that typeface, and that's what's sent. So Monotype's position is that what is sent from Deluxe to the user is a bitmap.

Now, because Deluxe concedes as much in its answer,

there can be no right to be free from disturbance because they've conceded essentially that they've breached the agreement.

THE COURT: All right, I think I understand the position, and I will hear from the defendants. Thank you, Mr. Puzella.

MR. PUZELLA: And if I may, there are 93A arguments as well that I can address later.

THE COURT: Thank you.

Who will be speaking for the defendants?

MS. MAERKER: I will, your Honor. Thank you.

THE COURT: Ms. Maerker?

MS. MAERKER: Maerker, yes. It rhymes with "worker."

THE COURT: Okay, good enough.

MS. MAERKER: So, first of all, I agree with Mr. Puzella that the question of use is not at issue in the motion to dismiss here. We obviously differ on whether Deluxe's system allows customers to use the software, but the Court asked why Deluxe has focused on the interpretation of the word "bitmap," and the reason is that the other two alleged breaches turn on whether the electronic images that Deluxe sends to its customers are or are not bitmaps. Monotype says that those images breach the license because Deluxe is sending them to third parties and because the third parties can print them on any number of computers. The question is whether they

are bitmaps that fall within the scope of what the license restricts.

So Deluxe's two counterclaims for breach of the guarantee of undisturbed use and for 93A are both based on allegations that Monotype has been interfering with Deluxe's exercise of its licensed rights. Deluxe has alleged that Monotype was upset about losing out on a bid for a new business model that Deluxe was developing and has come up with a pretextual reason to try to extract additional money from Deluxe for its already licensed use. Deluxe, as Mr. Puzella pointed out, has been exercising these rights for a long time openly on the Internet in the model that we're referring to. Monotype has a duty to police its trademarks, and Deluxe has been using Monotype's font names in that context, and apparently Monotype didn't have a problem with Deluxe's use until it lost out on this recent bid. Since that time, Monotype has been --

THE COURT: In other words, you don't say that it has anything to do with the advancements in technology and the Internet-based sales and so forth?

MS. MAERKER: Well, no, because the Internet-based sales have been going on for about ten years, and only after losing out on this recent bid for a different type of product line has Monotype started sending increasingly aggressive correspondence demanding that Deluxe stop using its licensed

rights, and that Deluxe pay Monotype additional money for rights that it already purchased, and even gone so far as to file this litigation. These are clearly disturbing Deluxe's use. Mr. Puzella says, "Well, we haven't turned off the software, we haven't contacted customers," but there's no allegation that they have the power to turn off the software remotely. They've done everything that they can in their power to stop Deluxe from using its licensed rights.

The same behavior is also a clear violation of Chapter 93A. It's true that a run-of-the-mill contract dispute doesn't rise to the level of a 93A violation, but that's not what Deluxe is alleging. Deluxe alleges that Monotype, again, was annoyed that it lost a new business opportunity, and therefore came up with a pretext to try to get more money out of the existing license. That kind of contract is consistently held to run afoul of 93A.

What's more, as to the 93A damages issue, the case law is clear that hiring counsel to respond to a 93A violation amounts to monetary damages under the statute. So Monotype's motion to dismiss is based on a little bit of smoke and mirrors as to the meaning of the term "bitmap." They say Deluxe admits that it sends these images of text rendering the font to its customers, and therefore Delux admits that it's breaching the license, and therefore our conduct is justified; but that is of course the ultimate issue in the case, and it's one that you

don't actually have to decide on the motion to dismiss.

I will, if your Honor is interested, point to a few elements in the license that Mr. Puzella --

THE COURT: Well, I gave him a little latitude, so I'll give you the same, but just a couple of minutes.

MS. MAERKER: Sure. So the term "bitmap" is juxtaposed with the term "outline." Both of them are included in the definition of licensed products. So licensed products is 1.01(d) and includes "outlines, bitmaps, printer, or screen fonts."

"Outline" is a definition that is similar in many ways to the definition of "bitmap." They're two different forms of font software. "Outline means a machine-readable digital representation of a single typeface style in a fixed weight/ width in PostScript Type 1 format that may be represented in varying resolutions."

So the Court may notice that unlike the definition for bitmap, outline does not specify a fixed point size. This makes sense in light of what the terms "bitmap" and "outline" mean in the broader world in the context of font software. They are two formats that can be used to create font software. Bitmap fonts are created from an array -- each letter is made of an array of dots or pixels, so that when you scale it up or down, it looks pixelated, it loses its lines. So that a bitmap font comes in a complete set of characters for every different

point size. You'll have a set of characters for 8-point and 10-point and 12-point. This makes sense in light of the definition of the term "bitmap" is a machine-readable representation of a typeface in a particular point size. Outline fonts are different. They're described by lines and curves, the outlines of letters, and they can be scaled to any size. So the "outline" definition naturally does not say that it's only in a fixed point size.

PostScript Type 1 format is a common computer language that's used for outline fonts. And, again, I would say machine readable is referring to software as opposed to human readable, which is what the plaintiff's brief calls the images that Deluxe sends to its customers showing a human readable rendering of the text in a given typeface. So all this goes to say that these two definitions in the license are referring to two different kinds of font software, and the term "bitmap" in the context of this license, as Monotype well knows, is a form of software and is not referring to the electronic images that show the output of the software. So it's the software that the license restricts, not the output, not the result of the software. If it did restrict that, it would be absurd. In fact, I mean, that's the point of the license is that Deluxe can use the software to create images of text in a given font and send it to its customers. That's what its business is.

But, as I said, that goes to the ultimate issue in the

case, or at least one of the ultimate issues, and it's not one that the Court needs to decide on this motion to dismiss. Monotype doesn't get to prevail on a disputed issue of contract law by essentially ignoring the dispute. Deluxe has stated a valid claim for breach of the guarantee of undisturbed use and the 93A violation, and it's alleged facts to support them, and the claim should be allowed to go forward.

THE COURT: All right, thank you, Ms. Maerker.

A brief rebuttal, Mr. Puzella, one minute.

MR. PUZELLA: Thank you, sir. We shouldn't get distracted. In our motion we point out that there are several other provisions that Deluxe has violated in connection with the agreement, and those other provisions also illustrate how it is that they're not entitled to disturbance. For example, 4.02 says that they cannot provide any of the licensed materials to third parties in any form, so that also takes care of a dispute concerning the meaning of "bitmap."

Moving on to the 93A issues, there's no "there" there. There are no facts to support an allegation that Monotype has done anything but assert good-faith licensed rights against Deluxe. We negotiated for a year, and the complaint doesn't have a single line about any suggestion by Monotype that the purpose of this -- that this litigation was anything but to protect its licensed rights. There's nothing in the complaint. It's a leap of faith, it's a bald allegation, and it's not

enough to support it.

On this question of damages, the defendant points the Court, I believe, to Paragraph 30 of the complaint and Paragraphs 1 and 2 of its Prayer For Relief to suggest that it did indeed allege damages in the form of attorneys' fees. I think if the Court looks at those three paragraphs, the Court will see that they did not. There's, again, an absence of facts just as there is with disturbance. Thank you.

THE COURT: All right, thank you, thank you.

Any rebuttal from you, Ms. Maerker?

MS. MAERKER: I would simply point out that the other paragraphs of the license to which Mr. Puzella refers all depend on whether licensed products, and therefore bitmaps, includes the pictures that Deluxe is sending to its customers.

THE COURT: Thank you. All right, I'm going to take that motion under advisement, but we do need to proceed to the scheduling portion of this proceeding, since no matter what I do on the motion to dismiss, this case will proceed. I have received the appropriate certificates in accordance with local Rule 16.1. I just want to make sure that you both actually have written signatures of your respective clients rather than just electronic signatures. I understand that the original signatures do not need to be filed, but what I do want is the fact that you have sat down or talked to by phone your respective clients about ADR and budgets, and that Ms. LaBreck

in the case of Deluxe and Ms. Dunlop in the case of Monotype have actually signed a piece of paper. Do you have that?

MR. PUZELLA: Your Honor, my client has not physically signed a piece of paper, but we have indeed at great length worked out these issues, so we can provide that to the Court.

THE COURT: All right. What we have found, at least in this session, where a client has to sit down with counsel and talk about the fact that there are ways to resolve cases short of spending a year or two in Federal Court and they sign a piece of paper that at least they think is going to be on file with this court is important. It's therapeutic. That's why I make you do it. Obviously I don't make you file that written signature with the court, but I want to know that counsel have in their possession such a signature.

What about your client, Ms. Maerker?

MS. MAERKER: Just as Mr. Puzella said, we have discussed extensively alternative courses for resolving this litigation at lower cost. Ms. LaBreck has not yet signed an actual piece of paper, but we're happy to get her to do that.

THE COURT: All right, I want her to do that.

MS. MAERKER: Sure.

THE COURT: And I will expect that you will notify the court that you have them. You certainly don't have to file them, but I want to know that you have them, okay?

MS. MAERKER: Certainly.

THE COURT: All right, then turning to the joint statements, I think we can turn it into my format. I am intrigued that you have both apparently agreed that this matter will be determined both as to liability and damages by virtue of a bench trial rather than a jury trial. Is my understanding correct?

MR. PUZELLA: Your Honor, that's my understanding with respect to liability but not damages.

THE COURT: Well, the proposed schedule shows that a bench trial on liability will occur at one stage and then later on a bench trial on damages, if necessary. Isn't that the agreement on Page 3 of the statement at the bottom, the last entry?

MR. PUZELLA: I'm looking at it, your Honor, and I apologize, I missed that. I intended a bench trial on liability but a jury trial on damages.

THE COURT: What says the defendant in that regard, Ms. Huston?

MS. HUSTON: Thank you, your Honor. Our understanding was that the parties had agreed to a bench trial, both on liability and damages, and Mr. Puzella's office had actually prepared this document.

THE COURT: Okay. And maybe it's not unanimous anymore, but at least at the time it was agreed that this would be a bench trial rather than a jury trial, correct?

MR. PUZELLA: On the issues of liability, your Honor. If it was mistakenly put in as a bench trial as our position, it was a mistake, and it's my responsibility.

THE COURT: All right, if you feel that there are reasons why I should not schedule this as a bench trial both ways, I'm going to allow you to brief that, but as of now, you've told me that it's to be a bench trial, so when I'm making up these dates, I have that in mind. So if you think you have reason to change that, then you'll have to apply to the Court, okay?

MR. PUZELLA: Understood. I'll discuss it with my client.

THE COURT: Okay. Then going down through the dates, automatic discovery I guess you've already accomplished, but we'll put today's date down, May 10. I do like to break fact discovery into written and oral, so we will say written discovery will be served on or before June 30, answered by July 31, and then completion of all fact discovery -- again, I like to use the last day of the month, so we'll say September 30 of this year. Experts to be designated and Rule 26 reports exchanged on October 31; rebuttal experts, if any, the same designated and reports by November 30; and conclusion of expert depositions by December 21. Motions for summary judgment -- that is, dispositive motions -- will be filed on or before January 31 of next year; oppositions by the

end of February, February 28. And then giving the Court a month or two to resolve that, I would like to put dates in here rather than number of days after. I'm going to give myself a deadline and will decide those dispositive motions within at least two months, so that we'll say that if the case is not resolved otherwise, we will have a bench trial on liability just about a year from now, early May of 2013. Since we impanel on Mondays and this is a bench trial, we should do it toward the end of a week.

THE CLERK: So the 8th or the 9th.

(Discussion between the Court and Clerk.)

THE COURT: Thursday, the 9th of May, 2013, will be the bench trial on liability. Then again giving myself a deadline, and understanding that I want to complete this case under all circumstances in 18 months, we'll say that my decision will be rendered by the end of May, the clock will start running on your 60 days, and close of fact discovery on damages will be July 31 of next year; close of expert discovery with respect to damages two months later, not three, September 30 of 2013; and then a bench trial on damages, at least as of now, would be the end of October, just about 18 months from now.

(Discussion between the Court and Clerk.)

THE COURT: Thursday, the 31st, Halloween of 2013 we'll have a bench trial on damages, unless it's determined

between now and then that it should be a jury trial.

Any problem with any of those dates, Counsel?

MS. HUSTON: No problems, your Honor. I would just ask for one clarification. If the plaintiff moves for summary judgment, we would like the ability to cross-move for summary judgment by the opposition deadline. That's why we had phrased it in our proposal as "oppositions and cross-motions for summary judgment."

THE COURT: And then opposition to that would be by -- 21 days in that case -- by March 21 any opposition to the cross motion, and then that gives me a month or so before the bench trial. It's tight, but we'll do it.

MS. HUSTON: Thank you, your Honor.

THE COURT: Okay? Anything else?

MR. PUZELLA: No, your Honor.

THE COURT: The plaintiff is satisfied with those dates?

MR. PUZELLA: Yes, your Honor.

THE COURT: All right, the only other thing that we generally try to schedule at this stage is some sort of mediation. Midstream we find that it works best, in this case perhaps after fact discovery but before you've gotten into all of the experts. What about October or November of this year for mediation? Does that make sense, Mr. Puzella?

MR. PUZELLA: Well, your Honor, the parties are

engaged in active settlement discussions now.

THE COURT: Well, that's of course the best way to resolve it.

MR. PUZELLA: Yes, your Honor.

THE COURT: In fact, we're willing to convene mediation sooner than that if it would be helpful.

MR. PUZELLA: And that may be the case, and I've raised this concept just today with the defendants. It may be helpful to schedule mediation in the fall after the close of fact discovery; but it may be the case, and in fact I will put it at fifty/fifty, that we may come to the Court looking for an earlier date for mediation.

THE COURT: Well, that's fine. If you want, we can use a default position, we would schedule it for October or November, but if you want it earlier, we'll be glad to give it to you.

MS. HUSTON: That's fine, your Honor. Thank you.

THE COURT: All right, we'll schedule it then for what, October or November? Which is your preference?

MR. PUZELLA: I think October, your Honor.

THE COURT: October it will be, and it would be referred to one of the magistrate judges. I can't remember which one is assigned to this case. I think I wrote it down somewhere.

THE CLERK: Bowler.

THE COURT: It's Bowler. She is known as being one of the best mediators around. You don't generally get out of her session without settling a case. But if she has been involved earlier, then it would not be assigned to her if she's had any involvement with the case up to that point. Otherwise, it may well be assigned to her.

Is there anything else that the Court can do at this stage with respect to scheduling that would help move the case along? Mr. Puzella?

MR. PUZELLA: No, your Honor.

THE COURT: Or Ms. Huston?

MS. HUSTON: No, your Honor. Thank you.

THE COURT: Thank you. Good luck.

(Adjourned, 11:53 a.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter, do hereby certify that the foregoing transcript, Pages 1 through 25 inclusive, was recorded by me stenographically at the time and place aforesaid in Civil Action No. 11-11985-NMG, Monotype Imaging, Inc., et al v. Deluxe Corporation, and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

In witness whereof I have hereunto set my hand this 14th day of May, 2012.

/s/ Lee A. Marzilli
_____
LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER